

RULE 83.5

ATTORNEYS: DISCIPLINARY RULES AND ENFORCEMENT

(a) Standards for Professional Conduct - Basis for Disciplinary Action

In order to maintain the effective administration of justice and the integrity of the Court, each attorney shall comply with the standards of professional conduct required by the Rules of Professional Conduct (the “Model Rules”), adopted by the American Bar Association, as amended. Attorneys who are admitted or permitted to practice before this Court are expected to be thoroughly familiar with the Model Rules’ standards.

Any attorney admitted to practice before this Court may be disbarred, suspended from practice, reprimanded, or subjected to such other disciplinary action as the circumstances may warrant for misconduct and for good cause shown, and after notice and opportunity to be heard.

Acts of omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate the Model Rules of Professional Conduct, as amended, shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship or in the course of judicial proceedings.

(b) Disciplinary Proceedings

When misconduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of an attorney admitted to practice before this Court, shall come to the attention of a Judge of this Court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these Rules, the Judge shall refer the matter before a Magistrate Judge or Disciplinary Committee for investigation and a report and recommendation. The Magistrate Judge or Disciplinary Committee shall afford the attorney the opportunity to be heard. Thereafter, the attorney may submit objections to the report and recommendation. Any objections are to be filed with the Court within fifteen (15) days upon notice of the report and recommendation. The matter will be submitted to the Court for final determination.

(c) Disciplinary Penalties

An order imposing discipline under this rule may consist of any of the following:

- (1) disbarment;
- (2) suspension;
- (3) public or private reprimand;
- (4) monetary penalties, including an order to pay the costs of proceedings; and/or
- (5) if the attorney was admitted *pro hac vice* or has been otherwise permitted to appear, preclusion from again appearing before this Court.

Any suspension or reprimand imposed may be subject to additional specified conditions, which may include continuing legal education requirements, counseling, and/or supervision of practice, or any other condition which the Court deems appropriate.

(d) Powers of Individual Judicial Officers to Deal with Contempt or Other Misconduct not Affected

The remedies for misconduct provided by this rule are in addition to the remedies available to individual judicial officers under applicable law with respect to lawyers appearing before them. Misconduct of any attorney in the presence of a judicial officer or in any manner with respect to any matter pending before the Court may be dealt with directly by the judicial officer in charge of the matter or, at said judicial officer's option, referred to the Chief Judge, or both.

Nothing in this rule shall limit the Court's power to punish contempt or to sanction counsel in accordance with the federal rules of practice and procedure or the Court's inherent authority to enforce its rules and orders.

(e) Notice of Disciplinary Action to Other Courts

The Clerk of Court shall give prompt notice of any order imposing discipline under this rule to the Court of Appeals for the First Circuit, the Supreme Court of Puerto Rico and the American Bar Association.

(f) Confidentiality

Unless otherwise ordered by the Court, complaints or grievances, and any files based on them, shall be treated as confidential.

(g) Disbarment on Consent While Under Disciplinary Investigation or Prosecution

- (1) Affidavit of Consent. Any attorney admitted to practice before this Court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment, but only by delivering to this Court an affidavit stating that the attorney desires to consent to disbarment and that:
 - (A) the attorney's consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of so consenting;
 - (B) the attorney is aware that there is a presently pending investigation or proceeding involving allegations that there exist grounds for the attorney's discipline the nature of which the attorney shall specifically set forth;
 - (C) the attorney acknowledges that the material facts so alleged are true; and,

- (D) the attorney so consents because the attorney knows that if charges were predicated upon the matters under investigation, or if the proceedings were prosecuted, the attorney could not successfully defend himself.
- (2) Order of Disbarment on Consent. Upon receipt of the required affidavit, the Court shall enter an order disbarring the attorney.
- (3) Disclosure. The order disbarring the attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of this rule shall not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

(h) Disbarment on Consent or Resignation in Other Courts

- (1) Any attorney admitted to practice before this Court who is disbarred on consent or resigns from the bar of any Court while an investigation into allegations of misconduct is pending, shall be stricken from the roll of attorneys admitted to practice before this Court, upon the filing of a certified copy of the judgment or order accepting such disbarment on consent or resignation.
- (2) Duty to Inform. Any attorney admitted to practice before this Court shall, upon being disbarred on consent or resigning from the bar of any Court while an investigation into allegations of misconduct is pending, promptly inform the Clerk of this Court of such disbarment on consent or resignation.

(i) Attorneys Convicted

- (1) Felony Convictions
 - (A) Conviction in this District. Upon the entry of judgment of a felony conviction against an attorney admitted to practice before this Court, the Clerk of Court shall immediately notify the Chief Judge of the conviction. The Chief Judge or his/her designee may then immediately issue an order suspending the attorney, regardless of the pendency of any appeal, until final disposition of a disciplinary proceeding as set forth hereunder.
 - (B) Convictions in Other Courts. Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before this Court has been convicted of a felony in any Court of the United States or of a state, the District of Columbia, the Commonwealth of Puerto Rico, the Territory of Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States, of a felony, the Chief Judge or his/her designee shall enter an order immediately suspending that attorney, regardless of the pendency of any appeal, until final disposition of a disciplinary proceeding to be commenced upon such conviction. A copy of such order shall immediately be served upon the attorney.

- (C) Other Crimes. Upon the filing of a certified copy of a judgment of conviction of an attorney for any crime, the Chief Judge may appoint a Disciplinary Committee for whatever action deemed warranted.
- (2) Certified Judgment as Conclusive Evidence. A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based upon the conviction.
- (3) Reinstatement Upon Reversal of Conviction. An attorney suspended under the provisions of this rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction has been reversed but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney.

(j) Discipline Imposed by Other Courts

- (1) When it is shown to the Court that any member of its Bar has been suspended or disbarred from practice in any other court of record, or has been guilty of conduct unbecoming a member of the Bar of the Court, the member will be subject to suspension or disbarment by the Court. The member shall be afforded an opportunity to show good cause, within such time as the Court shall prescribe, why the member should not be suspended or disbarred. Upon the member's response to the order to show cause, and after hearing, if requested, or upon expiration of the time prescribed for a response, if no response is made, the Court shall enter an appropriate order.
- (2) Upon the filing of a certified copy of a judgment or order establishing that an attorney admitted to practice before this Court has been disciplined by any court of competent jurisdiction, this Court shall issue forthwith a notice directed to the attorney containing:
 - (A) a copy of the judgment or order from the issuing court; and
 - (B) an order directing the attorney to show cause within thirty (30) days after service why disciplinary action should not be taken against him or her.
- (3) The Court may designate another judicial officer or a Disciplinary Committee to investigate and submit a report and recommendation.

(k) Reinstatement

- (1) After Disbarment or Suspension. An attorney suspended or disbarred may not resume practice until reinstated by order of this Court.
- (2) Hearing on Application. Petitions for reinstatement by a disbarred or suspended attorney under this rule shall be filed with the Chief Judge of the Court who shall schedule the matter for consideration by the district judges of this Court within thirty (30) days from receipt of the petition. In considering the petition for reinstatement, the district judges shall enter such order as

they deem appropriate. In considering the petition for reinstatement, the Court may schedule a hearing at which petitioner shall have the burden of demonstrating by clear and convincing evidence that he/she has the moral qualifications, competency and learning in the law required for admission to practice before this Court and that resumption of the practice of law will not be detrimental to the integrity of the bar, the administration of justice, or undermine the public interest.

- (3) Conditions of Reinstatement. If the petitioner is found unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the judgment shall reinstate him, provided that the judgment may make reinstatement conditional upon the payment of all or part of the costs of the proceedings and upon the making of partial or complete restitution to parties harmed by the petitioner whose conduct led to the suspension or disbarment.

(I) Duties of the Clerk of Court

- (1) Upon being informed that an attorney admitted to practice before this Court has been convicted of any crime, the Clerk of Court shall determine whether the clerk of the court in which such conviction occurred has forwarded a certificate of such conviction to this Court. If a certificate has not been so forwarded, the Clerk of Court shall promptly obtain a certificate and file it with this Court.
- (2) Upon being informed that an attorney admitted to practice before this Court has been subjected to discipline by another court, the Clerk of this Court shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this Court, and, if not, the Clerk of Court shall promptly obtain a certified or exemplified copy of the disciplinary judgment or order and file it with this Court.
- (3) Whenever it appears that any person convicted of any crime or disbarred or suspended or censured or disbarred on consent or precluded from appearance and practice by this Court is admitted to practice law in any other jurisdiction(s) or before any other court(s), the Clerk of this Court shall promptly transmit to the other court(s), a certificate of the conviction or a certified exemplified copy of the judgment or order of disbarment, suspension, censure, disbarment on consent, or order of preclusion, as well as the last known office and residence addresses of the defendant or attorney.
- (4) The Clerk of Court shall, likewise, promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this Court.